

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 423 Beverage Law

**SPONSOR(S):** La Rosa

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

The bill expands the current prohibition related to the redemption, possession, or use of coupons for malt beverages by alcoholic beverage vendors. The bill prohibits the possession or use of wine or fortified wine coupons, in physical or electronic format, or wine or fortified wine cross-merchandising coupons by alcoholic beverage vendors.

The bill exempts financial transaction between a vendor and a manufacturer from all tied house evil prohibitions if the following conditions are met:

- The financial transaction must be negotiated at arm's length for fair market value between a manufacturer of beer or malt beverages, and
- The financial transaction cannot involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and the licensed vendor.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

In Florida, the Beverage Law<sup>1</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.<sup>3</sup>

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.<sup>4</sup>

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.<sup>5</sup>
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”

##### Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>6</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>7</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>8</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>9</sup>

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>10</sup>

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> s. 561.02, F.S.

<sup>4</sup> s. 563.01, F.S.

<sup>5</sup> s. 561.01(5), F.S.

<sup>6</sup> s. 561.14, F.S.

<sup>7</sup> s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>8</sup> s. 561.22(1), F.S.

<sup>9</sup> ss. 563.022(14) and 561.14(1), F.S.

<sup>10</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004), [http://www.lanepowell.com/wp-content/uploads/2009/04/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf).

Florida's Tied House Evil Law<sup>11</sup> prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor
- naming a vendor in any advertisement for a malt beverage tasting
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

### *Coupons*

A licensee under the Beverage Law may not possess or use, in physical or electronic format, any type of malt beverage coupon or malt beverage cross-merchandising coupon in this state, where:

- The coupon is produced, sponsored, or furnished, whether directly or indirectly, by an alcoholic beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person thereof; and
- The coupon is or purports to be redeemable by a vendor or other person who sells malt beverages to consumers in the state.

### **Effect of the Bill**

The bill amends s. 561.42(13), F.S., expanding the current prohibition related to the redemption, possession, or use of coupons for malt beverages by alcoholic beverage vendors. The bill prohibits the possession or use of wine or fortified wine coupons, in physical or electronic format, or wine or fortified wine cross-merchandising coupons by alcoholic beverage vendors.

The bill creates an exemption, s. 561.42(15), F.S., for financial transactions between a vendor and a manufacturer from all tied house evil prohibitions, if the following conditions are met:

- The financial transaction must be negotiated at arm's length for fair market value between a manufacturer of beer or malt beverages, and
- The financial transaction cannot involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and the licensed vendor.

### **B. SECTION DIRECTORY:**

Section 1      Amends s. 561.42, F.S., prohibiting the possession or use by certain licensees of specified wine or fortified wine coupons; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor.

Section 2      Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

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<sup>11</sup> s. 561.42(1), F.S.

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Vendors and manufacturers will no longer be subject to tied house evil prohibitions related to financial transactions other than the direct sale of beer or malt beverages. This may be of great financial benefit to both vendors and manufacturers, and may have a negative financial impact to distributors.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DBPR has expressed the following concerns:<sup>12</sup>

The bill broadly exempts financial transactions between manufacturers of malt beverages and vendors from the prohibitions of the Tied House Evil Law. The exemption is susceptible to numerous unforeseen financial arrangements that would be otherwise impermissible pursuant to Florida law for any other manufacturer or vendor of alcoholic beverages. Regulatory monitoring of the industry arrangements facilitated pursuant to such an exemption would rely heavily on referrals of complaints by industry or other interested parties, and alleged violations may be difficult to prove for purposes of enforcement.

The bill expands the current prohibition on the redemption, possession, or use of malt beverage coupons or cross-merchandising coupons to prohibit the redemption, possession, or use of wine or fortified wine coupons or cross-merchandising coupons by any licensee under the Beverage Law. In addition, the bill includes an exemption from the tied house evil prohibitions of s. 561.42, F.S., financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law if such financial transaction does not

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<sup>12</sup> See DBPR, Agency Analysis of 2017 House Bill 423 (Feb. 13, 2017).

involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and licensed vendor.

With the exception of the authority granted in s. 561.221, F.S., for a manufacturer holding multiple manufacturing licenses to transfer malt beverages to or between the manufacturer's own breweries, manufacturers of malt beverages do not sell or deliver malt beverages directly to vendors. Under the Beverage Law, manufacturers sell to distributors and distributors then sell and deliver the malt beverages to vendors. Accordingly, financial transactions between manufacturers and vendors inherently do not involve, either all or in part, the direct sale or distribution of malt beverages between the manufacturer and the vendor. The bill essentially exempts nearly any financial transaction between a manufacturer of malt beverages and a vendor from the prohibitions of the Tied House Evil Law applicable to all other manufacturers and vendors. Pursuant to the bill, manufacturers of malt beverages may be able to:

- Have a financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law;
- Assist any vendor by any gifts or loans of money or property of any description;
- Give, lend, rent, sell, or furnish a vendor with any outside sign, printed, painted, electric, or otherwise;
- Engage in cooperative advertising with a vendor;
- Name a vendor in any advertisement for a malt beverage tasting; or
- Pay for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**